

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

PART 129.

SMOKE-FREE FOOD SERVICE ESTABLISHMENTS

333.12901-333.12904 Repealed. 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: The repealed sections pertained to definitions, preparation and service of wild game, creation of food service sanitation advisory board, and license to operate food service establishment.

Popular name: Act 368

***** 333.12905 THIS SECTION IS AMENDED EFFECTIVE MAY 1, 2010: See 333.12905.amended *****

333.12905 Public areas as nonsmoking; "public area" defined; seating designated for smokers; increasing seating for smokers prohibited; shopping malls; determination of compliance; criteria for denying, suspending, limiting, or revoking license; complaint of violation; investigation; order to cease food service operations; applicability of section to private facility, separate room, or fraternal organization; definitions.

Sec. 12905. (1) Except as otherwise provided in this section, all public areas of a food service establishment shall be nonsmoking. As used in this subsection, "public area" includes, but is not limited to, a bathroom, a coatroom, and an entrance or other area used by a patron when not seated at a food service table or counter. Public area does not include the lobby, waiting room, hallways, and lounge areas of a food service establishment, but these areas are not required to be designated as smoking areas.

(2) Subject to subsection (3), a food service establishment with a seating capacity of fewer than 50, whether or not it is owned and operated by a private club, and a food service establishment that is owned and operated by a private club may designate up to 75% of its seating capacity as seating for smokers. A food service establishment with a seating capacity of 50 or more that is not owned or operated by a private club may designate up to 50% of its seating capacity as seating for smokers. A food service establishment that designates seating for smokers shall clearly identify the seats for nonsmokers as nonsmoking, place the seats for nonsmokers in close proximity to each other, and locate the seats for nonsmokers so as not to discriminate against nonsmokers.

(3) A food service establishment shall not use the definition of seating capacity and the exemption from that definition set forth in subsection (9)(c) to increase the amount of seating for smokers above 75%.

(4) In addition to a food service establishment that provides its own seating, subsections (1), (2), and (3) also apply to a food service establishment or group of food service establishments that are located in a shopping mall where the seating for the food service establishment or group of food service establishments is provided or maintained, or both, by the person who owns or operates the shopping mall. As used in this subsection, "shopping mall" means a shopping center with stores facing an enclosed mall.

(5) The director, an authorized representative of the director, or a representative of a local health department to which the director has delegated responsibility for enforcement of this part shall, in accordance with R 325.25902 of the Michigan administrative code, inspect each food service establishment that is subject to this section. The inspecting entity shall determine compliance with this section during each inspection.

(6) The department or a local health department shall utilize compliance or noncompliance with this section or with rules promulgated to implement this section as criteria in the determination of whether to deny, suspend, limit, or revoke a license pursuant to section 12907(1).

(7) Within 5 days after receipt of a written complaint of violation of this section, a local health department shall investigate the complaint to determine compliance. If a violation of this section is identified and not corrected as ordered by the local health department within 2 days after receipt of the order by the food service establishment, the local health officer may issue an order to cease food service operations until compliance with this section is achieved.

(8) This section does not apply to a private facility that is serviced by a catering kitchen or to a separate room in a food service establishment that is used for private banquets. This section does not apply to a food service establishment that is owned and operated by a fraternal organization, if service is limited to members of the fraternal organization and their guests.

(9) As used in this section:

(a) "Bar" means that term as defined in section 2a of the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being section 436.2a of the Michigan Compiled Laws.

(b) "Room" means an area that is physically distinct from the main dining area of a food service

establishment and from which smoke cannot pass into the main dining area.

(c) "Seating capacity" means the actual number of seats for patrons in a food service establishment. Seating capacity does not include seats located at a bar or seats at tables that are located adjacent to a bar, if meals are not served at those tables.

(d) "Smoking" means the carrying by an individual of a lighted cigar, cigarette, or other lighted smoking device.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1986, Act 96, Eff. July 1, 1986;—Am. 1988, Act 297, Eff. Mar. 30, 1989;—Am. 1993, Act 242, Eff. Apr. 1, 1994.

Popular name: Act 368

***** 333.12905.amended THIS AMENDED SECTION IS EFFECTIVE MAY 1, 2010 *****

333.12905.amended Food service establishment; smoking prohibited; shopping malls; inspection; determination of compliance; investigation of complaint; order to cease food service operations; good faith effort to prohibit smoking; affirmative defense; affidavit; violation; civil fine; definitions.

Sec. 12905. (1) An individual shall not smoke in a food service establishment, and the person who owns, operates, manages, or is in control of a food service establishment shall make reasonable effort to prohibit individuals from smoking in a food service establishment.

(2) In addition to a food service establishment that provides its own seating, subsection (1) applies to a food service establishment or group of food service establishments that are located in a shopping mall in which the seating for the food service establishment or group of food service establishments is provided or maintained, or both, by the person who owns or operates the shopping mall.

(3) The director, an authorized representative of the director, or a representative of a local health department to which the director has delegated responsibility for enforcement of this part shall inspect each food service establishment that is subject to this section. The inspecting entity shall determine compliance with this section during each inspection.

(4) Within 5 days after receipt of a written complaint of violation of this section, a local health department shall investigate the complaint to determine compliance. If a violation of this section is identified and not corrected as ordered by the local health department within 2 days after receipt of the order by the food service establishment, the local health officer may issue an order to cease food service operations until compliance with this section is achieved.

(5) A food service establishment shall comply with sections 12603(2) and 12606. It is an affirmative defense to a prosecution or civil or administrative action for a violation of this section that the owner, operator, manager, or person in control of a food service establishment where smoking is prohibited under this section made a good faith effort to prohibit smoking by complying with section 12603(2). To assert the affirmative defense under this subsection, the owner, operator, manager, or person shall file a sworn affidavit setting forth his or her efforts to prohibit smoking and his or her actions of compliance with section 12603(2).

(6) An individual who violates this part shall be directed to comply with this part and is subject to a civil fine of not more than \$100.00 for a first violation and not more than \$500.00 for a second or subsequent violation.

(7) As used in this section:

(a) "Food service establishment" means that term as defined in section 1107 of the food law of 2000, 2000 PA 92, MCL 289.1107.

(b) "Shopping mall" means a shopping center with stores facing an enclosed mall.

(c) "Smoking" means that term as defined in section 12601.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1986, Act 96, Eff. July 1, 1986;—Am. 1988, Act 297, Eff. Mar. 30, 1989;—Am. 1993, Act 242, Eff. Apr. 1, 1994;—Am. 2009, Act 188, Eff. May 1, 2010.

Popular name: Act 368

333.12905a-333.12908 Repealed. 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: The repealed sections pertained to display of poster diagramming and explaining antichoking techniques in food service establishment; payment of sanitation service and state license fees; denial, suspension, limitation, or revocation of license; and delegation of authority and responsibility for enforcement of requirements.

Popular name: Act 368

***** 333.12909 SUBSECTION (3) EXPIRES AUGUST 17, 1981: See (3) of 333.12909 *****

333.12909 Rules; manufacturing, processing, or freezing frozen desserts; compliance with

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standards; adoption of federal provisions by reference; recognition of other enforcement procedures; meanings of certain terms; expiration of subsection (3); food service establishment or vending machine in place before effective date of part; food service sanitation program as required service.

Sec. 12909. (1) The department shall promulgate rules to prescribe criteria for programs by local health departments and procedures for the administration and enforcement of this part. The department may promulgate rules to prescribe minimum standards of sanitation for the protection of the public health and otherwise provide for the implementation of this part. The department in promulgating these rules shall seek the advice and counsel of local health departments and the food service industry.

(2) The manufacturing, processing, or freezing of frozen desserts as defined in section 2 of the frozen desserts act of 1968, Act No. 298 of the Public Acts of 1968, being section 288.322 of the Michigan Compiled Laws, in food service establishments licensed pursuant to this part, which frozen desserts are intended only for use in the soft form by patrons, guests, patients, or employees, shall comply with the standards of this part and rules promulgated pursuant to this part.

(3) Except as otherwise specifically defined or described in this part, the provisions of the 1976 recommendations of the United States food and drug administration for a food service sanitation manual, including a model food service sanitation ordinance and the unabridged form of "the vending of food and beverages--a sanitation ordinance and code--1965 recommendations of the public health service" are adopted, except any reference in these ordinances and codes to adulteration, misbranding, advertising, and enforcement procedures. Upon written request from a local health department, the department may recognize certain enforcement procedures other than those contained in this part and rules promulgated under this part, when the procedures will result in enforcement which is equivalent in effectiveness and have been legally adopted by the local department of health. The words "municipality of . . ." as used in the recommendations for a model food service sanitation ordinance shall mean the state and the term "regulatory authority" shall mean the local health officer in charge of a local health department or the local health officer's designated representative. This subsection shall expire September 30, 1981 or when the rules promulgated under subsection (1) are promulgated, whichever is sooner.

(4) The design, construction, and equipment of a food service establishment or vending machine which was in place before the effective date of standards developed or adopted under this part shall be considered to be in compliance with this part if they are in compliance with the standards in effect on the date they were installed and if they are in good repair and are being maintained in a sanitary condition.

(5) A food service sanitation program which meets the requirements of this part is a required service under part 24.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1982, Act 324, Eff. Mar. 30, 1983.

Compiler's note: Subsection (3) of this section expired August 17, 1981, the date rules authorized under subsection (1) were promulgated, being R 325.25101 et seq. of the Michigan Administrative Code.

For transfer of powers and duties of the food service sanitation program from the department of public health to the director of the department of agriculture, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

Popular name: Act 368

Administrative rules: R 285.514.1 of the Michigan Administrative Code.

333.12910-333.12913 Repealed. 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: The repealed sections pertained to transitory food units; construction, remodeling, or alteration of food service establishments; investigation of food-borne diseases and poisonings; and storage or application of sulfiting agents prohibited.

Popular name: Act 368

***** 333.12914.added THIS ADDED SECTION IS EFFECTIVE MAY 1, 2010 *****

333.12914.added Rules prohibited.

Sec. 12914. Notwithstanding any other provision of this act to the contrary, the department shall not promulgate rules to implement or administer the provisions of this part that were added by the amendatory act that added this section.

History: Add. 2009, Act 188, Eff. May 1, 2010.

Popular name: Act 368

333.12915 Local authority limited; exception; local permit; compliance with local codes, regulations, or ordinances.

Sec. 12915. A county, city, village, or township shall not regulate those aspects of food service

establishments or vending machines which are subject to regulation under this part except to the extent necessary to carry out the responsibility of a local health department pursuant to sections 12906 and 12908. This part shall not relieve the applicant for a license or a licensee from responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances not in conflict with this part.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1982, Act 526, Eff. Mar. 30, 1983.

Popular name: Act 368

333.12916 Repealed. 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: The repealed section pertained to food establishment, delicatessen, or bakery offering certain food for sale.

Popular name: Act 368

333.12921 Repealed. 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: The repealed section pertained to injunction or other process.

Popular name: Act 368

333.12922 Violation as misdemeanor.

Sec. 12922. A person who violates this part or a rule promulgated under this part is guilty of a misdemeanor.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368